



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWA - 175702

PRELIMINARY RECITALS

Pursuant to a petition filed on July 19, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on August 10, 2016, by telephone.

The issue for determination is whether the petitioner remains functionally eligible for the IRIS program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.

2. The petitioner is a 70-year-old woman who has been disabled because of an injury she suffered in 1988. She had kidney failure four years ago.
3. The petitioner can bathe independently but requires grab bars and a shower chair.
4. The petitioner moves about her house using a cane and holding onto her dog. She has trouble walking more than several yards without resting.
5. The petitioner can cut and eat her own food.
6. The petitioner can use the toilet independently.
7. The petitioner can get into and out of bed without assistance.
8. The petitioner can get dressed without assistance.
9. The petitioner can prepare simple meals using a microwave.
10. The petitioner drives her own car without restrictions.
11. The petitioner manages her own finances and uses a computer to pay her bills.
12. The petitioner manages her own medication.
13. The petitioner has no cognitive impairments.

DISCUSSION

The Bureau of Long-Term Support seeks end the petitioner's enrollment in the Wisconsin IRIS program, a fee-for-service alternative to the Family Care and Partnership programs for individuals requesting a long-term care support program in Family Care counties. It allows persons to direct their own care. *Medicaid Eligibility Handbook*, § 37.1.1. IRIS, which stands for "Include, Respect I Self-Direct," requires potential recipients to reside in a county with Family Care, have a nursing home level of care, and meet the MA Waiver financial and non-financial criteria. *Id.*, § 37.1.3. The petitioner lives in a county with Family Care, but the agency contends she no longer requires care at the nursing home level.

The nursing home level of care, which is also referred to as the comprehensive level of care, is described as follows at Wis. Admin. Code, § DHS 10.33(2)(c):

A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or

requires a range of medical or social interventions due to a multiplicity of conditions.

b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code, § DHS 10.33(2)(c).

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code, § DHS 10.33(2)(a). The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. FCP-44/115906*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The petitioner is a 70-year-old woman with various physical limitations. It was difficult to obtain information because of her belligerence. She said her worker had a vendetta against her. I found no evidence of this. Late in the hearing, after her worker testified that the petitioner told her the day before that she had help with laundry, the petitioner started screaming that the worker was a liar. At that point, when it appeared obvious that there would be no further relevant evidence produced, I ended the hearing.

Earlier, the petitioner insisted that she was disabled, which is undisputed but irrelevant. The issue is whether she requires the type of care generally found in a nursing home, a more difficult standard to meet than being found disabled. Meeting the nursing home level of care depends upon meeting the previously discussed legal standards.

The petitioner can bathe, dress, eat, transfer from one surface to another, and use the toilet without assistance. She can also move about, but this is limited because she requires a cane or other support, such as her dog, and can only go short distances. From this, I find that she is limited in one of her activities of daily living. She manages her own medications and money, uses the telephone with no assistance, and drives with no restrictions. But she is limited in her meal preparation and what she eats. She testified that she cannot eat sandwiches or cook proper meals. Based upon this, I find that she cannot perform one instrumental activity of daily living. This means that there is one activity of daily living and one instrumental activity of daily living that she cannot safely and appropriately perform. She has no cognitive impairments or developmental disabilities. Her limitations do not meet any the standards set by Wis. Admin. Code, § DHS 10.33(2)(c). Therefore, the department correctly determined that she no longer is eligible for IRIS.

CONCLUSIONS OF LAW

1. The petitioner does not meet the nursing home level of care.
2. The petitioner is no longer eligible for IRIS because she does not meet the nursing home level of care.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 31st day of August, 2016

\s _____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 31, 2016.

Bureau of Long-Term Support